IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 2ND JULY 2007 / 11TH ASHADHA 1929

Bail Appl..No. 3954 of 2007()

CRIME NO. 332/07 OF PALLURUTHY POLICE STATION

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PETITIONER/1ST PETITIONER

O.S.SUBRAMANYAN,S/O.SREEDHARAN,
AGED 43 YEARS,OZHUKATH HOUSE,CHERANELLOORE DESOM,
CHERANELLOORE P.O.,KOCHI-34.

BY ADV. SRI.T.K.AJITHKUMAR (VALATH)

RESPONDENT/COMPLAINANT:

STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR,HIGH COURT OF KERALA.

BY PUBLIC PROSECUTOR SRI. S.U. NAZAR

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 02/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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B.A.No. 3954 of 2007

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Dated this the 2nd day of July, 2007

O R D E R

Application for anticipatory bail. The petitioner is the third accused. Along with the co-accused, he faces allegations, inter alia, under Sections 406 and 420 I.P.C. Two of them (A1 and A5) have already been arrested and released on regular bail on the date of such application. The petitioner apprehends imminent arrest.

2. The crux of the allegation is that all the accused persons were running a chitty business. They have collected amounts from the defacto complainant and made themselves scarce one morning after closing the business premises. Investigation is in progress. The petitioner apprehends imminent arrest.

3. The prayer is to invoke the extra ordinary equitable discretion under Section 438 Cr.P.C. Such discretion is to be invoked sparingly and in exceptional cases, that too, only in aid of justice. Such extra ordinary equitable discretion is not to be invoked as a matter of course. In the facts and circumstances of this case I find absolutely no reason why jurisdiction under Section 438 Cr.P.C.

can or ought to be invoked. It would be idle for this court to accept the copy of the document produced as Annex. 2 and come to the conclusion that the petitioner was not a partner on the relevant date of closer of the establishment. This I am satisfied is a fit case where, like the co-accused, the petitioner must resort to the ordinary and regular procedure of appearing before the Investigator or the learned Magistrate having jurisdiction and then seek regular bail in the ordinary course. I have no reason to assume that the learned Magistrate would not consider the application for bail on merits, in accordance with law and expeditiously.

4. This application is accordingly dismissed. Needless to say, if the petitioner surrenders before the Investigating Officer or the learned Magistrate having jurisdiction and applies for regular bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass orders on merits, in accordance with law and expeditiously - on the date of surrender itself.

(R. BASANT)
Judge

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